

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 687 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SMT HARSHA PRAGJI VEKARIA

Versus

HARSHADRAI MAGANLAL GANDHI

Appearance:

MR KANUBHAI I PATEL for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/07/2000

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rent Act, at the instance of the original defendant - tenant, who was sued by the respondent plaintiff - landlord for a decree of eviction on the ground of arrears of rent for more than six months. The

trial Court dismissed the suit of the landlord, and strangely, held that although the defendant is in arrears of rent for more than six months, the landlord would not be entitled to a decree for possession. The landlord therefore preferred an appeal u/s 29[1] of the said Act. The lower appellate Court, after appreciation of the evidence on record and application of the correct principles of law as laid down by the Supreme Court, allowed the appeal and passed a decree of eviction in favour of the landlord - plaintiff and against the tenant - defendant. Hence, the present revision at the instance of the tenant.

2. Only a few salient features require to be noted.

It was alleged by the landlord that the defendant was the tenant of the plaintiff - landlord, and that the contractual rent was Rs.75/- per month. In the statutory notice of demand served by the landlord upon the defendant, it was alleged that the rent is due from 1st July 1979 to 31st March 1981, that is to say for a period of more than six months. This statutory notice was served upon the defendant by registered A.D. post, calling upon the tenant to tender the specific amount of Rs.1,575/-. The defendant - tenant though served with the notice, neither tendered the amount of rent nor did he reply to the suit notice.

2.1 The landlord therefore filed the suit for eviction on the ground of arrears of rent exceeding six months.

2.2 The tenant in her written statement at exh.11, took up a contention for the first time as regards the standard rent. It is to be noted that the trial Court determined the standard rent at Rs.65/- per month, which was set aside by the lower appellate Court, on the finding that the contractual rent at Rs.75/- per month was the standard rent.

3. It is not in dispute that the rent was due from 1st July 1979 on the date of service of the notice (for a period of more than six months) and in fact, the defendant has admitted that she is in arrears of rent for 21 months. This was also the finding recorded by the trial Court.

3.1 There is no controversy that the municipal taxes are to be borne by the landlord, which is even otherwise obvious from the rent note at exh.30. It therefore stands established that the tenant was in arrears of rent of more than six months on the date of the statutory

notice, and that the rent was payable by the month (since no taxes were payable by the tenant). It is well settled position in law that in order to avail of the benefit of section 12[3][a] of the Rent Act, the tenant must raise a dispute as to standard rent within 30 days of the receipt of the suit either by a counter notice or by filing an application u/s 11[4], and merely by raising this contention for the first time in the written statement would not be sufficient to take the case out of operation of section 12[3][a]. On the facts of the case, it is established as found by both the Courts below that the defendant cannot be believed when she says that she had gone to the landlord to pay up the arrears of rent after receipt of the notice, but the landlord had refused to accept the same. There was nothing to prevent her from sending the amount by money order, which she chose not to do.

3.2 Even otherwise, the lower appellate Court has on a hypothetical assumption that section 12[3][b] of the Rent Act may apply, come to a conclusion on fact that the tenant had not even deposited the rent during the appellate proceedings, and therefore, is not entitled to protection even under this provision.

4. In the premises aforesaid, I find that there is no reason to interfere with the judgement and decree of the lower appellate Court which requires to be confirmed. Consequently, this revision requires to be dismissed, and is accordingly dismissed. Rule discharged with costs. Interim relief stands vacated.

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